

March 14, 1936

Hon. A. E. Wood, Chairman
Game, Fish & Oyster Commission
Austin, Texas

Dear Sir:

Opinion No. 0-436
Re: Authority of Game, Fish and
Oyster Commission to con-
demn property under Imminent
Domain Statute

Your request for an opinion as to whether, under the existing statutes, the Game, Fish & Oyster Commission can condemn property necessary for a channel from the Gulf of Mexico into the Laguna Madre has been received by this Department.

The right of imminent domain is an inherent power in the people. The people have delegated that power to the Legislature. The Legislature has the sole power to prescribe the occasions on which the State may exercise the power and the mode of doing so. Since the Legislature cannot in every case supervise the condemnation of property for public use, it may confer that power on agencies and frequently does so. But only the sovereign power or one to whom it has delegated the right can take property without the consent of the owner.

The statutes creating the Game, Fish & Oyster Commission, and those setting forth the powers and duties of the Commission do not confer any general power upon the Commission to condemn property for their use.

The Legislature has seen fit to delegate to certain agencies the power of condemning land desired for public use, and during the First-called session of the Forty-first Legislature gave the Game, Fish & Oyster Commission the power to condemn lands necessary for the construction and maintenance of fish hatcheries in Smith County, Texas. We fail to find that they had prior to

that time conferred any general power of condemnation on the Commission, and in that instance they restricted the grant of power to Smith County, Texas. The Legislature not having made an express grant of the power of condemnation to the Commission, we cannot by implication confer that power upon the Commission, for the courts have held that the statutes conferring the power of eminent domain be strictly construed, and if the power is doubtful, it will be resolved in favor of the property owner.

It is the opinion of this Department that the Game, Fish & Oyster Commission does not have authority to condemn property for their purposes under our present statutes.

Yours very truly

ATTORNEY GENERAL OF TEXAS

BY

Morris Hodges
Morris Hodges
Assistant

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MR-MR

APPROVED:

Gerard C. Maury
ATTORNEY GENERAL OF TEXAS